IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 1529 OF 2006
IN
SUIT NO. 922 of 1990

Anurag Sites .. Plaintiff
versus
W.M.I. Cranes Limited .. Defendant

...

Mr.Rajesh Shah for the plaintiff.
Mr.Zal Andhyarujina i/b Dhru & Co. for the defendant

CORAM : D.G. KARNIK,J.

DATED : 27th February 2007.

P.C.:

1. This Chamber Summons is taken out by the plaintiff for amendment of the plaint. Counsel for the defendant strongly opposes the Chamber Summons and submits that the amendment should not be allowed.

2. All amendments are generally allowed unless there are special reasons for rejecting the same. Such special reasons could be that by amendment the plaintiff seeks to include a claim which is ex-facie barred by limitation. Another ground as submitted by learned counsel for the defendant,is that the reliefs

claimed by an amendment ex-facie cannot be granted. He submits that in the present case the claim sought to be made by an amendment is ex-facie not grantable and therefore the amendment should not be allowed.

3. In order to appreciate the arguments of the learned counsel for the defendant it is necessary to examine what is the original cause of action and what reliefs are sought to be claimed by the proposed amendment. According to the plaintiff, it gave on licence a hoarding site to the defendant. A sum of Rs.26,87,340/- is claimed as damages/ compensation for use of the hoarding site for a period prior to the date of the institution of the suit. The damages are computed on the basis that licence fee which would have been payable at that rate by the defendant for use of the hoarding site. In the suit the plaintiff has also prayed that defendant should be ordered to pay Rs.17,000/- per month as compensation for use of the hoarding site from the date of the suit till the date on which the defendant ceases to use the hoarding site. By the proposed amendment, the plaintiff claims the amount of compensation at a higher rate from the date of the suit. Counsel for the plaintiff submits that Rs.17,000/- per month was

claimed on the basis that the hoarding site was used by the defendant without illumination. Counsel submits that after the institution of the suit, the defendant illuminated the hoarding site and this came to the knowledge of the plaintiff some time in November/December 2006. He therefore submits that the plaintiff would be entitled to claim compensation enhanced rate from the date of the suit till discontinuance of the user by the defendant.

5. At the outset, it may be noted in the suit the plaintiff has not claimed possession of the hoarding site. In the circumstances, ordinarily there would be no question of awarding any mesne profits from the date of the suit till payment as possession is not claimed. Mesne profits can be ordered under Order 20 Rule 12 of the Code of Civil Procedure only where a decree for possession is passed. Prima facie, therefore, the plaintiff is not entitled to claim any compensation in the present suit for the period after the filing of the suit. Needles to say that plaintiff was entitled and is still entitled to file separate suit for recovery of a compensation/damages for the alleged wrongful use from the date of the suit till date, subject to law

of limitation. As the plaintiff could not have claimed future compensation in this suit for any period after the filing of the suit, the question of the plaintiff claiming enhanced compensation for the period after the filing of the suit does not arise.

6. Even assuming that compensation can be claimed in the suit for any period after filing of the suit, in my view, this is not a fit case for allowing the amendment for the reasons that by the amendment, plaintiff is seeking to claim compensation for the period commencing from the year 1990 upto the date. The compensation for the period of more than three years is clearly barred by limitation. The effect of allowing the amendment would be to allow the plaintiff to make a claim which is bared by limitation. For this reason also, the amendment cannot be allowed.

7. There is no merit in the chamber summons which is hereby dismissed.

D.G. KARNIK, J